

**EMPLOYER STATUS DETERMINATION
East Penn Railroad, LLC (ESPN)**

This is a determination of the Railroad Retirement Board concerning the status of East Penn Railroad, LLC (ESPN) as an employer under the Railroad Retirement Act (45 U.S.C. § 231 et seq.) (RRA) and the Railroad Unemployment Insurance Act (45 U.S.C. § 351 et seq.) (RUIA). The status of ESPN under the Acts has not previously been considered.

Information about ESPN was furnished by its Office Manager, Diane Klein. ESPN is a subsidiary (100% owned) of Regional Rail, LLC.¹ Mr. Robert C. Parker is the Chief Executive Officer of ESPN. ESPN began operations and first began compensating employees on August 28, 2007.

In Surface Transportation Board (STB) Finance Docket No. 35056, decided July 3, 2007, John C. Nolan, a noncarrier individual, Penn Eastern Rail Lines, Inc. and East Penn Railways Inc. jointly filed a verified notice of exemption to merge two existing rail carriers into one surviving rail corporation (ESPN) in order to simplify the corporate structure². ESPN will operate approximately 251.1 miles of railroad line which will be owned by ESPN. The rail lines include: Octoraro Line (25.6 miles), Wilmington & Northern Line (29 miles), Lancaster Northern (12.1 miles), Colebrookdale Line (8.6 miles), Manheim Line (1 mile), Kutztown Line (4.1 miles), Perkiomen Line (15.6 miles), Quakertown Line (10 miles), Chester Valley Line (2 miles), Bristol Terminal (1.7 miles), and North Philadelphia Contract Switching (5 miles). The STB decision stated that ESPN intended to consummate the transaction on or about July 27, 2007. ESPN will interchange freight with Norfolk Southern, CSX, and Brandywine Valley Railway.

According to Ms. Klein, ESPN has 17 employees, 15 full-time and 2 part-time. Ms. Klein further stated that ESPN provides common carrier freight service and expects to handle approximately 8,100 carloads of freight annually. Ms. Klein also stated that ESPN will perform no passenger service.

¹ Ms. Klein advised that Regional Rail LLC does not have any employees at this time, as "they are being paid as employees of ESPN." Ms. Klein also advised that at this time, ESPN has no brother/sister companies and Regional Rail LLC has no other subsidiaries.

² The two carriers to be merged are East Penn Railway which was determined to be a covered employer by L-96-17 and Penn Eastern Rail Lines which was determined to be a covered employer by L-98-15.

Section 1(a)(1) of the Railroad Retirement Act (45 U.S.C. § 231(a)(1)), insofar as relevant here, defines a covered employer as:

- (i) any carrier by railroad subject to the jurisdiction of the Surface Transportation Board under Part A of subtitle IV of title 49, United States Code;

Section 1 of the RUIA (45 U.S.C. § 351) contains essentially the same definition, as does section 3231 of the Railroad Retirement Tax Act (26 U.S.C. § 3231).

The evidence of record establishes that ESPN is a rail carrier operating in interstate commerce. Accordingly, it is determined that East Penn Railroad LLC became an employer within the meaning of section 1(a)(1)(i) of the Railroad Retirement Act and its corresponding provision of the Railroad Unemployment Insurance Act effective August 28, 2007, the date on which it began operations and as of which its first employee was first compensated. [Cf. Rev. Rule. 82-100, 1982-1 C.B. 155, wherein the IRS held that a company became an employer under the Railroad Retirement Tax Act on the date it hired employees to perform functions directly related to its carrier operations.]

Original signed by:

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